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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,312	07/01/2003	Robert Kast	LEGAP005	3939
21912	7590	12/19/2005	EXAMINER	
VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			NGUYEN, CINDY	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/611,312

Applicant(s)

KAST ET AL.

Examiner

Cindy Nguyen

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/30/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is in response to application filed on 07/01/03 in which claims 1-20 are presented for examination.

### ***Information Disclosure Statement***

The information disclosure statement filed on 09/30/05 is in compliance with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. Because it has been placed in the application file, and the information referred to therein has been considered as to the merits.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### ***Arrangement of the Specification***

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.

- (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

There is no header of Brief summary of the invention, correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midgley et al. (US 20030074378) (Midgley) in view of Azagury et al. (US 6430580) (Azagury).

Regarding claims 1, 8 and 19, Midgley discloses: A method, a system and a computer program product for transferring data comprising: performing a first operation wherein the first operation copies a first file from a first memory to a second memory, and a second file from the first memory to the second memory, wherein the first file is copied substantially concurrently with the copying of the second file, and wherein the first operation results in a first copied file and a second copied file in the second memory (paragraphs 0058); and

However, Midgley didn't disclose: performing a second operation wherein the second operation updates the first copied file and the second copied file in a predetermined order. On the other hand, Azagury discloses: performing a second operation wherein the second operation updates the first copied file and the second copied file in a predetermined order (col. 4, lines 53-61, Azagury). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include the step for performing a second operation wherein the second operation updates the first copied file and the second copied file in a predetermined order in the system as taught by Azagury, in the system of Midgley. The motivation being enable the system provided program threads are running in parallel and performs updates a memory location, manages the queue of buffers which must handle parallel updated.

In addition, Midgley /Azagury discloses: a processor (10, fig. 1, Midgley); a first memory coupled to the processor, wherein the first memory is associated with a first file and a second file (paragraph 0032, Midgley).

Regarding claim 2, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein the first operation includes a synchronization operation (paragraph 0058, Midgley).

Regarding claim 3, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein the second operation includes a substantially real-time replication operation (paragraph

0067, Midgley).

Regarding claim 4, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein the first file and the second file are copied regardless of order (col. 5, lines 25-38, Azagury).

Regarding claims 5, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein the copying of the first file is associated with a first thread and the copying of the second file is associated with a second thread (col. 3, lines 35-49, Azagury).

Regarding claim 6, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein a first command associated with the first operation can be processed by a first thread or a second thread, and a second command associated with the second operation can be processed by the second thread (col. 3, lines 35-49, Azagury).

Regarding claims 7, all the limitations of this claim have been noted in the rejection of claim 1 above. In addition, Midgley /Azagury discloses: wherein the copying of the first file is associated with a first connection between the first memory and the second memory, and the copying of the second file is associated with a second connection between the first memory and the second memory (paragraphs

0058, Midgley).

Regarding claims 9, 18 and 20, Midgley /Azagury discloses: A method, a system and a computer program product for transferring data associated with a real-time data replication system comprising: providing a first thread, wherein the first thread can process a first and a second types of commands (paragraphs 0058, Midgley); providing a second thread, wherein the second thread can process the first type of command (paragraphs 0058, Midgley); substantially concurrently processing a first command by the first thread and a second command by the second thread, wherein the first and second commands are associated with the first type of command (paragraphs 0050, 0058, Midgley).

Regarding claims 10, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the first type of command includes a sync command (paragraph 0050, 0051, Midgley).

Regarding claims 11, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the second type of command includes a non-synch command (paragraph 0050, 0051, Midgley).

Regarding claims 12, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the

transfer of the first and second commands by the first and second threads is performed regardless of order associated with the first and second commands (col. 5, lines 25-38, Azagury).

Regarding claims 13, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the first type of command has an order associated with it and the order is maintained (col. 5, lines 25-38, Azagury).

Regarding claims 14, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: further comprising determining whether the second thread can move ahead in a queue, wherein the first command and the second command are associated with the queue (col. 5, lines 25-38, Azagury).

Regarding claims 15, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the second thread can move ahead in a queue if the first thread is associated with the first type of command, wherein the first command and the second command are associated with the queue (col. 5, lines 25-38, Azagury).

Regarding claims 10, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the second thread cannot move ahead in a queue if the first thread is associated with the second type of command, wherein the first command and the second command are

associated with the queue (col. 5, lines 25-38, Azagury).

Regarding claims 17, all the limitations of this claim have been noted in the rejection of claim 9 above. In addition, Midgley /Azagury discloses: wherein the first thread cannot process the second type of command unless the second thread is waiting on the first thread to process the second type of command (col. 5, lines 9-25, Azagury).

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571-272-4023. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CN

Cindy Nguyen

November 29, 2005

  
**FRANTZ COBY**  
**PRIMARY EXAMINER**